IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

NOTICE OF MOTION NO.2859 OF 2001
IN
SUIT NO.1708 OF 1982

M/s.National Foundry Plaintiffs

versus

Surendra Raojibhai Amin & ors. Defendants

Simil Purohit & Viraj Amin i/by B. Amin & Co. for plaintiffs.

Mr.Shiraji i/by Eastley Lam & Co. for defendants 1, 2, 7 and 9.

CORAM : S.C.DHARMADHIKARI, J.

DATE : 10th June 2005

PC :

1. This notice of motion is taken by defendants 1, 2, 7 and 9 for a direction to the plaintiff to deposit a sum of Rs.2,59,503.51 Ps. allegedly towards arrears of taxes due to the Municipal Corporation of Greater Bombay and a sum of Rs.6,82,687.51 Ps. towards arrears of rent in this Court. The suit is filed by the plaintiff for specific performance of an agreement dated 13th August 1969. Learned counsel appearing for the plaintiff contends that the defendants cannot

get a relief of this nature in their suit for specific performance and remedy of the defendants is to take out substantive proceedings. That apart, he points out that insofar as rent is concerned, the purchase price has been paid in full and advance rent is also tendered, as pointed out on affidavit. There is no liability to pay the rent. Mr.Shiraji objects to this and states that even these amounts are in arrears. In my view, this is an aspect which need not be gone into and it will always be open to the defendants who have taken the notice of motion to point out to this Court that the plaintiffs are not entitled to specific performance of the agreement for sale as they have not fulfilled their obligations thereunder. Additionally, it would be open to take out such proceedings for recovery of these amounts as are permissible in law. No directions are, therefore, necessary for payment of rent.

2. As far as payment of property taxes are concerned, they are dues of public body. In any event, it will be in the interest of plaintiff who is in possession of the property to pay its share of property taxes, if not already paid. That apart, Mr.Purohit appearing for plaintiff

makes a serious grievance that there are no particulars furnished insofar as property taxes are concerned. Mr.Shiraji undertakes to forward all particulars including photocopies of notices/receipts received from the Municipal Corporation to the plaintiff's advocate within a period of two weeks from today. On receipt of such documents and upon scrutiny thereof, the plaintiff shall pay to the Municipal Corporation its share of the property taxes, if not already paid. Needless to state that all such payments would be without prejudice to the rights of plaintiff and it would be open to the plaintiff to urge that the liability to pay the same accrues only after the execution of the conveyance in their favour. All appropriations and adjustments would be made at the hearing of suit. This order is without prejudice to the rights and contentions of both sides. Notice of Motion disposed off.

(S.C.DHARMADHIKARI, J.)